

# 29 Reg for P  
10/25/03

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: William P. Apps

Serial No.: 09/780,073

Filed: February 9, 2001

Attorney Docket No.: RPC 0557 PUS

For: Nestable Can Tray With Contoured Wall Structure

**REQUEST FOR REFUND  
UNDER 37 C.F.R. § 1.28(a)**

Mail Stop 16 (refunds)  
Director of the US Patent & Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:


**I. REFUND REQUEST**

This request for refund is made in response to the August 2003 "Monthly Statement of Deposit Account" just received, in which four (4) separate fees were charged to Applicant's Deposit Account for the above application, in the amounts of \$320, \$320, \$144, and \$84.

A. Appeal Fees: Applicant is guessing that the charges for \$320 and \$320 are for the Notice of Appeal (mailed May 2, 2003) and Appeal Brief (mailed July 31, 2003) filed after the Examiner re-opened prosecution. However, in each of these documents, the Applicant fully explained that these fees had already been paid before the Examiner re-opened prosecution, and therefore no additional fees should be due. MPEP 1208.02 states:

Whether appellant elects to continue prosecution or to request reinstatement of the appeal, if prosecution was reopened prior to a decision on the merits by the Board of Patent Appeals and Interferences, the fee paid for the notice of appeal, appeal brief, and request for oral hearing (if applicable) will be applied to a later appeal on the same application.

Thus, because these fees had already been paid, the PTO charging the \$320 and \$320 to Account 50-1984 was improper and should be refunded.

<b>CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8</b>	
I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop 16, Director of the US Patent & Trademark Office, PO Box 1450, Alexandria, VA 22313-1450, on:	
October 17, 2003	Konstantine J. Diamond
Date of Deposit	Name of Person Signing
	
	Signature

B. Extra Claim Fees: Applicant was also charged \$144 and \$84, presumably for additional claims. However, Applicant cannot find support for these charges in the file. Applicant added claims in an Amendment dated February 6, 2003. However, Deposit Account 50-1984 was already charged for these fees as reflected in the March 2003 Deposit Account Statement. The undersigned can find no reason why these fees were charged to Deposit Account 50-1984. These fees must be refunded.

Therefore, the total amount of the refund requested is \$ 868.00 (\$320 + \$320 + \$144 + \$84, all reflected in the August 2003 Deposit Account Statement for account 50-1984).

## II. MANNER OF REFUND

Please make refund by crediting \$ 868.00 to Deposit Account No. 50-1984.

Respectfully submitted,

William P. Apps

Date: October 17, 2003

By: Kan J. Diamond

Konstantine J. Diamond, Reg. No. 39,657  
4010 E. 26<sup>th</sup> St.  
Los Angeles, CA 90023  
Phone: 323-262-5145; Fax: 323-269-8506